

ELMER M. JOHNSON

IBLA 75-250

Decided April 25, 1975

Appeal from decision of Area Manager, Bureau of Land Management, Belle Fourche, South Dakota, rejecting grazing lease application.

Set aside and remanded.

1. Administrative Practice -- Grazing and Grazing Lands -- Grazing Leases:  
Generally -- Grazing Leases: Preference Right Applicants

Where the record does not clearly show whether either or both of two grazing lease applicants are preference right applicants and does not reflect consideration of all of the factors mandated by 43 CFR 4121.2-1(d)(2) for evaluating conflicting grazing lease applications, a decision awarding the lease to one of the parties will be set aside and the case remanded for further consideration.

APPEARANCES: Elmer M. Johnson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Elmer M. Johnson has appealed from a decision of the Area Manager, Bureau of Land Management (BLM), Belle Fourche, South Dakota, dated October 24, 1974, rejecting his grazing lease application for 120 acres in Harding County, South Dakota.

By decision of March 27, 1973, BLM approved an assignment of a grazing lease, covering the lands in issue from Mable Hanson to James Miller. Miller filed a grazing lease application for the

lands on August 29, 1974, 1/ seeking a renewal of the lease which expired on November 14, 1974. 2/

Appellant filed his grazing lease application on or about September 5, 1974, 3/ for the lands in issue.

The decision appealed from recites in pertinent portion as follows:

On October 17-18, 1974, a field examination was made to examine the facts in the case.

A grazing lease for the parcel of land described above is issued to James A. Miller for the following reasons:

1. James A. Miller has past historical legal use of the land.
2. The land in question is fenced into Miller's pasture and fenced from Johnson's land.
3. The forage condition indicates proper range management on the parcel of land.

Because of the above, the grazing lease will be issued to James A. Miller. The lease application in the name of Elmer M. Johnson is rejected in its entirety.

The grazing lease will be effective November 15, 1974 and expire February 25, 1976.

If you wish to appeal this decision, you have 30 days to notify the Director of the Bureau of Land Management in accordance with 43 CFR 1840. 4/

---

1/ The decision below states Miller's application was filed August 26, 1974, but it is date-stamped August 29, 1974.

2/ Applications for grazing under section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970), for lands in an existing grazing lease "must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease." 43 CFR 4125.1-1(a)(3).

3/ The application is not date-stamped, but the decision below uses the same date.

4/ Since July 1, 1970, 35 F.R. 10010, appeals from BLM decisions are not within the ambit of the authority of the BLM Director.

[1] Although the decision below adverts to a field examination, no report thereof is embodied in the record. The record suggests that appellant and Miller are preference right applicants within the ambit of 43 CFR 4121.2-1(c), but such a finding can only be raised by inference from the record. Also, the record fails to reveal that the Area Manager considered all the criteria for allocation of the land under 43 CFR 4121.2-1(d)(2) 5/ between rival applicants.

Accordingly, we deem it proper to set aside the decision below and to remand the case for further consideration, preparation of a new decision based upon an adequate record and the appropriate criteria set forth in the regulations. Cf. R. A. Malesich, 13 IBLA 199 (1973). 6/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the secretary of the Interior, 43 CFR 4.1, the

---

fn. 4 (Continued)

Since August 13, 1971, 36 F.R. 15119, 43 CFR 1840 simply refers to 43 CFR Part 4. the applicable regulations concerning the filing of appeals recites in part as follows:

"§ 4.411 Appeal; how taken, mandatory time limit.

"(a) A person who wishes to appeal to the Board must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal."

5/ This subsection reads as follows:

"(2) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application (where access is not presently available), and (vii) other land use requirements." (Footnote omitted.)

6/ The new decision should also give accurate information concerning the appeal procedures and should designate the conflicting applicant as an adverse party who must be served with copies of any appeal from the decision in accordance with 43 CFR 4.413.

decision appealed from is set aside and the case is remanded for appropriate action consistent with this decision.

Frederick Fishman  
Administrative Judge

We concur:

Joan B. Thompson  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

